

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 199

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO SPECIAL EDUCATION; CLARIFYING THE STATE'S  
RESPONSIBILITY TO PROVIDE SPECIAL EDUCATION SERVICES; REQUIRING  
PUBLIC EDUCATION DEPARTMENT PARTICIPATION IN DEVELOPMENT OF  
AGREEMENTS BETWEEN SCHOOL DISTRICTS AND PRIVATE EDUCATIONAL  
TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS; REQUIRING  
STUDENT IDENTIFICATION NUMBERS FOR STUDENTS ATTENDING  
EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS;  
REQUIRING EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL  
TREATMENT CENTERS TO PROVIDE REASONABLE PHYSICAL SPACE FOR  
EDUCATIONAL PROGRAMMING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-13-8 NMSA 1978 (being Laws 1972,  
Chapter 95, Section 4, as amended) is repealed and a new  
Section 22-13-8 NMSA 1978 is enacted to read:

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underscored material = new  
[bracketed material] = delete

1 "22-13-8. [NEW MATERIAL] SPECIAL EDUCATION--PRIVATE  
2 EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT  
3 CENTERS.--

4 A. Notwithstanding other provisions of the Public  
5 School Code, as used in this section:

6 (1) "qualified student" means a public school  
7 student who:

8 (a) has not graduated from high school;

9 (b) is regularly enrolled in one-half or  
10 more of the minimum course requirements approved by the  
11 department for public school students; and

12 (c) in terms of age: 1) is at least  
13 five years of age prior to 12:01 a.m. on September 1 of the  
14 school year or will be five years of age prior to 12:01 a.m. on  
15 September 1 of the school year if the student is enrolled in a  
16 public school extended-year kindergarten program that begins  
17 prior to the start of the regular school year; 2) is at least  
18 three years of age at any time during the school year and is  
19 receiving special education pursuant to rules of the  
20 department; or 3) has not reached the student's twenty-second  
21 birthday on the first day of the school year and is receiving  
22 special education in accordance with federal law; and

23 (2) "school-age person" means a person who is  
24 not a qualified student but who meets the federal requirements  
25 for special education and who:

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1 (a) will be at least three years old at  
2 any time during the school year;

3 (b) is not more than twenty-one years of  
4 age; and

5 (c) has not received a high school  
6 diploma or its equivalent.

7 B. The responsibility of school districts, state  
8 institutions and the state to provide a free appropriate public  
9 education for qualified students who need special education is  
10 not diminished by the availability of private schools and  
11 services. It is a state responsibility to ensure that all  
12 qualified students who need special education receive the  
13 education to which federal and state laws entitle them whether  
14 provided by public or private schools and services.

15 C. A school district in which a private,  
16 nonsectarian, nonprofit educational training center or  
17 residential treatment center is located shall not be considered  
18 the resident school district of a school-age person if  
19 residency is based solely on the school-age person's enrollment  
20 at the facility and the school-age person would not otherwise  
21 be considered a resident of the state.

22 D. For a qualified student in need of special  
23 education or school-age person who is placed in a private,  
24 nonsectarian, nonprofit educational training center or  
25 residential treatment center by a school district or by a due

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1 process decision, the school district in which the qualified  
2 student or school-age person lives, whether in-state or out-of-  
3 state, is responsible for the educational, nonmedical care and  
4 room and board costs of that placement.

5 E. For a school-age person placed in a private,  
6 nonsectarian, nonprofit educational training center or  
7 residential treatment center not as a result of a due process  
8 decision but by a parent who assumes the responsibility for  
9 such placement, the department shall ensure that the school  
10 district in which the facility is located is allocating and  
11 distributing the school-age person's proportionate share of the  
12 federal Individuals with Disabilities Education Act Part B  
13 funds but the state is not required to distribute state funds  
14 for that school-age person.

15 F. For a qualified student or school-age person in  
16 need of special education placed in a private, nonsectarian,  
17 nonprofit educational training center or residential treatment  
18 center by a New Mexico public noneducational agency with  
19 custody or control of the qualified student or school-age  
20 person or by a New Mexico court of competent jurisdiction, the  
21 school district in which the facility is located shall be  
22 responsible for the planning and delivery of special education  
23 and related services, unless the qualified student's or school-  
24 age person's resident school district has an agreement with the  
25 facility to provide such services.

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1           G. Except as provided in Subsection D of this  
2 section, the department shall determine which school district  
3 is responsible for the cost of educating a qualified student in  
4 need of special education who has been placed in a private,  
5 nonsectarian, nonprofit educational training center or  
6 residential treatment center outside the qualified student's  
7 resident school district. The department shall determine the  
8 reasonable reimbursement owed to the receiving school district.

9           H. A local school board, in consultation with the  
10 department, may make an agreement with a private, nonsectarian,  
11 nonprofit educational training center or residential treatment  
12 center for educating qualified students in need of special  
13 education and for whom the school district is responsible for  
14 providing a free appropriate public education under the federal  
15 Individuals with Disabilities Education Act and for providing  
16 payment for that education. All financial agreements between  
17 local school boards and private, nonsectarian, nonprofit  
18 educational training centers and residential treatment centers  
19 must be negotiated in accordance with rules promulgated by the  
20 department.

21           I. All agreements between local school boards and  
22 private, nonsectarian, nonprofit educational training centers  
23 and residential treatment centers must be reviewed and approved  
24 by the secretary. The agreements shall ensure that all  
25 qualified students placed in a private, nonsectarian, nonprofit

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1 educational training center or residential treatment center  
2 receive the education to which they are entitled pursuant to  
3 federal and state laws. All agreements must provide for:

4 (1) student evaluations and eligibility;

5 (2) an educational program for each qualified  
6 student that meets state standards for such programs, except  
7 that teachers employed by private schools are not required to  
8 be highly qualified;

9 (3) special education and related services in  
10 conformance with an individualized education program that meets  
11 the requirements of federal and state law; and

12 (4) adequate classroom and other physical  
13 space provided at the private, nonsectarian, nonprofit  
14 educational training center or residential treatment center  
15 that allows the school district to provide an appropriate  
16 education.

17 J. The agreements must also acknowledge the  
18 authority and responsibility of the local school board and the  
19 department to conduct on-site evaluations of programs and  
20 student progress to ensure that the education provided to the  
21 qualified student is meeting state standards.

22 K. A qualified student for whom the state is  
23 required by federal law to provide a free appropriate public  
24 education and who is attending a private, nonsectarian,  
25 nonprofit educational training center or a residential

1 treatment center is a public school student and shall be  
 2 counted in the special education membership of the school  
 3 district that is responsible for the costs of educating the  
 4 student as provided in the individualized education program for  
 5 the student.

6 L. The department shall adopt the format to report  
 7 individual student data and costs for any qualified student or  
 8 school-age person attending public or private educational  
 9 training centers or residential treatment centers and shall  
 10 include those reports in the student teacher accountability  
 11 reporting system by using the same student identification  
 12 number issued to a public school student pursuant to Section  
 13 22-2C-11 NMSA 1978 or by assigning a unique student identifier  
 14 for school-age persons, including those who are not residents  
 15 of this state but who are attending a private, nonsectarian,  
 16 nonprofit educational training center or residential treatment  
 17 center in this state. Every public and private educational  
 18 training center and every public and private residential  
 19 treatment center that serves school-age persons in this state  
 20 shall comply with this provision.

21 M. The department shall promulgate rules to carry  
 22 out the provisions of this section."

23 Section 2. Section 32A-12-2 NMSA 1978 (being Laws 1979,  
 24 Chapter 227, Section 2, as amended) is amended to read:

25 "32A-12-2. RESIDENTIAL TREATMENT PROGRAMS--[REGULATIONS]

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1 RULES.--The secretary of children, youth and families shall  
2 adopt [~~regulations~~] rules to provide for:

3 A. minimum standards that shall be met by a  
4 residential treatment program, including a requirement that the  
5 program make reasonable provisions for adequate physical space  
6 for a school district to provide the required free appropriate  
7 public education;

8 B. procedures and forms for applying for a  
9 departmental grant or contract;

10 C. procedures and criteria for review and approval  
11 or denial of such applications;

12 D. procedures for approval of facilities and  
13 programs in or through which services are to be performed;

14 E. procedures and specifications of programmatic  
15 and financial information to be reported by residential  
16 treatment programs to the children, youth and families  
17 department for purposes of evaluating the effectiveness of  
18 programs funded by the department; and

19 F. procedures for review of potential clients for  
20 residential treatment or therapeutic group home care."

21 Section 3. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2009.